

No. 18,448

United States Court of Appeals
For the Ninth Circuit

HERMAN G. GUMATAOTAO, vs. GOVERNMENT OF GUAM,	<i>Appellant,</i> <i>Appellee.</i>
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BRIEF FOR APPELLEE

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Subject Index

	Page
Jurisdictional statement	1
Summary of argument	1
Argument	2

I

The evidence presented rationally supports the finding that Enrique F. Santos is a "child" as that term is used in Section 273a, Penal Code of Guam	2
---	---

II

A person may be convicted for causing a child to become in need of the care and protection of the Juvenile Court under Section 273a, Penal Code of Guam, although prior to the offense such child was already in need of such care and protection	6
---	---

III

In the absence of a showing by appellant that the lower court's interpretation of a local statute is clearly erroneous, such interpretation must prevail on appeal	9
Conclusion	10

Table of Authorities Cited

Cases	Pages
Advertiser Publishing Company v. Fase, 279 F.2d 636 (9th Cir. 1960)	9
Cunningham v. United States, 86 A.2d 918 (D.C. Mun. App. 1952)	3, 4
DeCastro v. Board of Com'rs of San Juan, 322 U.S. 451, 64 S.Ct. 1121 (1944)	9
Lord v. Territory of Hawaii, 79 F.2d 761 (9th Cir. 1935)..	9
Sancho v. Texas Co. (P.R.), Inc., 308 U.S. 463, 60 S.Ct. 349 (1940)	9
State v. Fries, 246 Wis. 521, 17 N.W.2d 578 (1945).....	3
United States ex rel. Fong On v. Day, 54 F.2d 990 (2d Cir. 1932)	3
United States v. Giles, 300 U.S. 41, 57 S.Ct. 340 (1937)....	9
United States v. Greenstein, 153 F.2d 550 (2d Cir. 1946)..	5, 6
United States v. Sherman, 171 F.2d 619 (2d Cir. 1948), cert. denied, 337 U.S. 931, 69 S.Ct. 1484 (1949).....	5
Williams v. State, 98 Ala. 52, 13 S. 333 (1893).....	3
Wong Fook Ngoey v. Nagle, 300 F. 323 (9th Cir. 1924)....	3
Young Fat v. Nagle, 3 F.2d 439 (9th Cir. 1925).....	3

Statutes

Guam Code of Civil Procedure:	
Section 63	1
Guam Penal Code:	
Section 4	7
Section 273a	6, 7, 8, 9, 10
Public Law 54, First Guam Legislature, 1952 (Second Regular Session	8
28 U.S.C., Sections 1291 and 1294	1
48 U.S.C., Section 1424(a)	1

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GOVERNMENT OF GUAM,

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BRIEF FOR APPELLEE

JURISDICTIONAL STATEMENT

This is a criminal case originally tried in the Island Court of Guam, appealed to the Appellate Division of the District Court of Guam, and upon affirmation, appealed to this Court. Jurisdiction in the District Court of Guam, Appellate Division, is based on 48 U.S.C., Section 1424(a), and Guam Code of Civil Procedure, Section 63. This Court's power to review the decision below is predicated on 28 U.S.C., Sections 1291 and 1294.

SUMMARY OF ARGUMENT

The lower Court properly held that sufficient evidence was presented to the trial Court to support its

finding that the minor involved herein was a person less than eighteen (18) years of age. The minor testified, an order of the Juvenile Court was offered and received in evidence which order recited the minor's precise date of birth and judicial notice was taken by the trial Court, without objection by appellee, of other records of the Juvenile Court which also recited the minor's age. (Appellant's Brief, p. 2.)

The trial Court and the Appellate Division of the District Court properly construed the provisions of the statutes involved and manifest error has not been alleged.

ARGUMENT

I

THE EVIDENCE PRESENTED RATIONALLY SUPPORTS THE FINDING THAT ENRIQUE F. SANTOS IS A "CHILD" AS THAT TERM IS USED IN SECTION 273a, PENAL CODE OF GUAM.

It is conceded that to convict appellant of the crime of, "Contributing to the Delinquency of a Minor," it was incumbent upon appellee to prove that Enrique F. Santos was a person less than eighteen (18) years of age.

The trial judge convicted appellant (R., doc. 9, p. 1), and implicit in this judgment is the finding that Enrique F. Santos was a person less than eighteen (18) years of age. Evidence to support this judgment can be found in the appearance of Enrique F. Santos before the trial court (R., doc. 14, pp. 1-5), record of

a Juvenile Court proceeding admitted into evidence (R., doc. 14, p. 10), and records of Juvenile Court proceedings judicially noticed by the trial judge. (R., doc. 14, p. 14.)

The record shows that Enrique F. Santos was called as a prosecuting witness and that he testified and was cross-examined. (R., doc. 14, pp. 1-5.) In so testifying, his appearance before the trial judge is competent evidence of his age. *United States ex rel. Fong On v. Day*, 54 F.2d 990 (2d Cir. 1932); *Young Fat v. Nagle*, 3 F.2d 439 (9th Cir. 1925); *Wong Fook Ngoey v. Nagle*, 300 F. 323 (9th Cir. 1924); *Cunningham v. United States*, 86 A.2d 918 (D.C. Mun. App. 1952); *State v. Fries*, 246 Wis. 521, 17 N.W.2d 578 (1945); *Williams v. State*, 98 Ala. 52, 13 S. 333 (1893).

In *Cunningham v. United States*, supra, the defendant-appellant was convicted of the crime of soliciting prostitution. The statute provided that the solicitation must be of a person sixteen (16) years of age or over. The defendant-appellant argued on appeal that since there was no specific testimony as to the ages of the police officers who were alleged to have been solicited, the defendant-appellant was entitled to an acquittal. The Court answered as follows:

“But both officers were in court and were examined and cross-examined at some length. This gave the judge a full opportunity to observe them and to form an opinion as to their ages from their physical appearance, manner and voice. We therefore apply the rule which has been followed in Federal as well as state courts that when the

age of a person becomes an issue and the person is present in court, the trier of the facts may use his senses and draw an inference as to the age of such person by personal observation. A contrary rule would be 'pedantically overcautious'. 2 Wigmore, Evidence, Section 222 (3d Ed. 1940).'' (Footnote omitted.)

Cunningham v. United States, supra, at p. 919. The Court's reasoning in the *Cunningham* case could be equally applied here. The trial judge had ample opportunity to form an opinion of the age of Enrique F. Santos by observing his physical appearance and general demeanor.

The record also shows that the prosecution had admitted into evidence an order of the Court in Juvenile Court Proceeding No. 83-61. (R., doc. 14, pp. 9-10.) The order recited that Enrique F. Santos was born on September 20, 1945. (R., doc. 14, p. 10.) This order is admissible to prove that the acts committed by appellant caused Enrique F. Santos to become in need of the care and protection of the Juvenile Court and is competent evidence of his age.

Again the record shows that at the request of appellant's counsel, the trial judge took judicial notice of Juvenile Court Proceedings listed on Nos. 83-61, 33-57, 73-59, 76-59, 77-60, and 81-60. (R., doc. 14, p. 14.) In all of these proceedings, the Court orders rendered therein contain findings that Enrique F. Santos was, at the time of the respective Juvenile Court hearing, a person within the jurisdiction of the Court and recited his age and date of birth.

No evidence was introduced by appellant concerning the childhood of Enrique F. Santos nor does the record show that a motion for a new trial was made on the basis of any evidence that Enrique F. Santos was, in fact, not a person less than eighteen (18) years of age. Apparently, the only objection is that no sufficient proof was made thereof.

Appellant's argument summarized in his brief, is as follows:

"The only evidence offered by appellee upon the trial tending to prove the childhood of Enrique F. Santos was an order entered in a Juvenile Court of Guam proceeding. (R., doc. 14, pp. 9-10.) And as that order was not based upon proof beyond a reasonable doubt, one of the elements of the crime alleged (the childhood of Enrique F. Santos) was not proven beyond a reasonable doubt." (Appellant's Brief, p. 5.)

Appellant's syllogism, while appealing, is erroneous. No authorities are cited to support the unarticulated premise that only evidence which has been established beyond a reasonable doubt can support a finding of a fact beyond a reasonable doubt. On the contrary, it seems well settled that, "There is no different standard applied to test the evidence in a criminal case than that which is applied in civil cases." *United States v. Sherman*, 171 F.2d 619 (2d Cir. 1948), cert. denied, 337 U.S. 931, 69 S.Ct. 1484 (1949); *United States v. Greenstein*, 153 F.2d 550 (2d Cir. 1946). While the trier of facts in a criminal prosecution must be convinced beyond a reasonable

doubt in bringing a verdict against a defendant, whereas in a civil case, he need not be so convinced, "The difference begins and ends with the admonition to the jury," to so find, *United States v. Greenstein*, supra.

In view of the foregoing, it is respectfully urged that the evidence rationally supports the finding that Enrique F. Santos was a person less than eighteen (18) years of age.

II

A PERSON MAY BE CONVICTED FOR CAUSING A CHILD TO BECOME IN NEED OF THE CARE AND PROTECTION OF THE JUVENILE COURT UNDER SECTION 273a, PENAL CODE OF GUAM, ALTHOUGH PRIOR TO THE OFFENSE SUCH CHILD WAS ALREADY IN NEED OF SUCH CARE AND PROTECTION.

Section 273a, Penal Code of Guam, reads as follows:

"Section 273a. Contributing. Any person who commits any act or omits the performance of any duty, which act or omission causes a child to become in need of the care and protection of the Juvenile Court, shall be guilty of a misdemeanor, may be tried for such offense in the Juvenile Court, and upon conviction may be punished by a fine not exceeding \$500, or by imprisonment not exceeding one year, or by both such fine and imprisonment."

As his second assignment of error on this appeal, appellant urges the following:

"2. As Enrique F. Santos was already in need of the care and protection of the Juvenile Court of Guam, appellant could not have caused him to

become in need of such care and protection.”
(Appellant’s Brief, pp. 3-4.)

The trial judge found that Enrique F. Santos had been, prior to the commission of the offense charged, declared to be a juvenile delinquent, but nevertheless, he held that the facts and circumstances of this case within the purview of Section 273a, Penal Code of Guam (R., doc. 6, pp. 1-2, as amended by R., doc. 8, p. 1.) This holding was affirmed by the lower Court. (R., doc. 20, pp. 1-3.)

It is clear from the foregoing, that what is at issue on this appeal is the proper construction of Section 273a, Penal Code of Guam. More particularly, this Court is being asked to construe the following provision of Section 273a, Penal Code of Guam:

“ . . . causes a child to become in need of the care and protection of the Juvenile Court. . . . ”

The construction of any provision in the Penal Code of Guam is governed by Section 4 thereof, which reads as follows:

“4. Construction of the Penal Code. The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.”

The lower Court’s construction of 273a, Penal Code, is certainly within the fair import of its terms in the light of its objective.

The object and main purpose of this provision, as the trial judge held, is to protect any child from becoming a prey to designing adults. (R., doc. 6, pp. 1-2.) It was enacted as part of Public Law 54, First Guam Legislature, 1952 (Second) Regular Session, creating the Juvenile Court and its many provisions designed to protect children by providing them with the care and guidance of a Court.

The simultaneous enactment of Section 273a, Penal Code of Guam, and the Juvenile Court Act, certainly indicates that the former was intended to be part of the statutory scheme protecting children from the effects of juvenile delinquency.

That Enrique F. Santos had already been in need of the care and protection of the Court is conceded, however, his prior need of the Court should not be construed as disqualifying him from the protective feature of Section 273a, Penal Code of Guam. On the contrary, he and those in similar circumstances, are more prone to be preys of designing adults and, therefore, in greater need of protection.

The trial Court's interpretation of Section 273a, Penal Code of Guam, gives said section a vital role in the carrying out of the functions of the Juvenile Court. With this interpretation in force, a Juvenile Court Judge can release a child to the custody of his parents or others, as was done in this particular case (R., doc. 6, p. 2) and be assured that adults will not be free to prey on him.

The appellant's view of Section 273a, Penal Code of Guam, would unduly restrict its scope. Even under

the rule of strict construction, the Courts are not required to adopt the most narrow interpretation of a statute. *United States v. Giles*, 300 U.S. 41, 57 S.Ct. 340 (1937).

In view of the foregoing, the Court is urged to construe Section 273a, Penal Code of Guam, as permitting the conviction of any person who causes a child to become in need of the care and protection of the Juvenile Court whether or not such child was adjudged a juvenile delinquent prior to the offense charged.

III

IN THE ABSENCE OF A SHOWING BY APPELLANT THAT THE LOWER COURT'S INTERPRETATION OF A LOCAL STATUTE IS CLEARLY ERRONEOUS, SUCH INTERPRETATION MUST PREVAIL ON APPEAL.

Section 273a, Penal Code of Guam, is a local statute of the territory of Guam. The lower Court is the highest Court of Guam and in effect is the Supreme Court of the territory of Guam for purposes of local statutes.

It is well settled that decisions of Insular Courts of United States territories on matters of purely local law will not be reversed unless clear and manifest error is shown. *DeCastro v. Board of Com'rs of San Juan*, 322 U.S. 451, 64 S.Ct. 1121 (1944); *Sancho v. Texas Co. (P.R.), Inc.*, 308 U.S. 463, 60 S.Ct. 349 (1940); *Advertiser Publishing Company v. Fase*, 279 F.2d 636 (9th Cir. 1960); *Lord v. Territory of Hawaii*, 79 F.2d 761 (9th Cir. 1935).

Appellant did not assert that the Court's interpretation of Section 273a, Penal Code of Guam, was clearly erroneous (Appellant's Brief, p. 6) nor did appellant cite any authorities to support his view of Section 273a, Penal Code of Guam, which may have shown the lower Courts to be clearly in error. Under these circumstances, reversal of the decisions of the two lower territorial Courts would be improper.

CONCLUSION

It is respectfully submitted that no good reason has been shown justifying the overruling of the opinion of the Appellate Division of the District Court of Guam and the consonant holding of the Island Court of Guam, and therefore the same should be affirmed.

Dated, Agana, Guam,

June 14, 1963.

Respectfully submitted,

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CERTIFICATION

We certify that in connection with the preparation of this brief, we have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit and that, in our opinion, the foregoing brief is in full compliance with the rules.

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